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Chair: Mr. Randeep Sarai



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• (1830)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Happy Valentine's Day, everyone. I know you all dreamed of this, that on Valentine's Day you'd be sitting in a room in the House of Commons.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Our spouses are very happy.

The Chair: They're very happy, yes. At least they can all watch you live. They can know that you're not with anyone else and that you're doing productive work, so it's good. Anyway, I thought I'd make a little light of that.

Welcome to meeting number 50 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the House order of February 13, 2023, the committee is beginning its study on the subject matter of Bill C-39, an act to amend the Criminal Code, medical assistance in dying.

Today's meeting is taking place in a hybrid format pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I'd like to make a few comments for the benefit of the witnesses and members. Please wait until I recognize you by name before speaking. For those participating via video conference, click on the microphone icon to activate your mike, and please mute yourself when you are not speaking.

For interpretation for those on Zoom, you have the choice at the bottom of your screen of floor, English or French audio. For those in the room, you can use the earpiece to select the desired channel. I remind you that all comments should be directed through the chair. For members in the room, if you wish to speak, please raise your hand, and for those on Zoom, if you wish to speak, please use the "raise hand" function.

I use little cue cards, so when you're down to 30 seconds, whether that's your statement or your questioning, I put this up so I don't have to interrupt you. When you're out of time, I raise the red card and ask you to wrap up. If you don't, then, unfortunately, I will have to interrupt you.

Let's now begin our study of the subject matter of Bill C-39—

[Translation]

Mr. Luc Thériault (Montcalm, BQ): Mr. Chair, I see that there are people attending via Zoom. Since I didn't hear you mention it, I just want to make sure that sound checks have been done and that the results were satisfactory.

[English]

The Chair: Absolutely, and thank you for asking. I confirmed with the clerk that the sound tests were all positive.

Let's begin our study on the subject matter of C-39, an act to amend the Criminal Code, medical assistance in dying.

Please welcome with me the Honourable David Lametti, Minister of Justice and Attorney General of Canada. Along with him are the following officials: Matthew Taylor, general counsel and director, criminal law policy section; Joanne Klineberg—she's online—acting general counsel; and Myriam Wills, counsel.

From the Department of Health, we have Sharon Harper, director general, health care programs and policy directorate; Venetia Lawless, manager, end-of-life care unit, via video conference; and Jacque Lemaire, senior policy analyst, also by video conference.

Welcome.

Mr. Lametti, I'll give you 10 minutes, if that will suffice.

Hon. David Lametti (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair, for the opportunity to speak to the committee on Bill C-39.

I thank all of you for the urgency you have shown in considering this important legislation.

I would also like to thank officials from both Health Canada and the Department of Justice who are here with me this evening. As you all are fully aware, this bill transcends different departments and, therefore, it is critical that I have Health Canada support here this evening in addition to the usual DOJ support.

[Translation]

In March 2021, the previous Bill C-7, an act to amend the Criminal Code (medical assistance in dying), provided greater eligibility to medical assistance in dying for people whose natural death was not reasonably foreseeable. It also provided for a temporary exclusion to the provision that mental illness could be the sole basis of a request for medical assistance in dying. If no legislative amendments are made, this exclusion will automatically be repealed on March 17, 2023. On that day, medical assistance in dying will become legal in such cases.

Bill C-39 proposes to temporarily extend the exclusion relating to mental illness for one year up until March 17, 2024.

• (1835)

[English]

The main objective of this bill is to facilitate the safe assessment and provision of MAID in all circumstances where a mental illness forms the only basis of a request for MAID. An extension of the exclusion of MAID eligibility in these circumstances would ensure health care system readiness by, among other things, allowing more time for the dissemination and uptake of key resources by the medical and nursing communities, including MAID assessors and providers. It would also give the government more time to meaningfully consider the report of the Special Joint Committee on MAID, or AMAD, which is expected to be tabled by Friday, February 17.

I am confident that a temporary one-year extension will allow us to proceed in a measured and prudent way and will ensure that we get this right. As always, our government remains committed to ensuring that our law reflects Canadians' evolving needs, protects those who may be vulnerable and supports autonomy and freedom of choice.

[Translation]

As I have just explained, the previous Bill C-7 temporarily excluded access to medical assistance in dying in cases where mental illness was the sole factor. This temporary exclusion is based on the fact that these cases are often complex and that it would be better to have more time to reflect on them.

Over the past two years, much work has been accomplished. The Expert Panel on Medical Assistance in Dying and Mental Illness has conducted an independent review of the protocols, directives and safeguarding measures to be recommended in those cases where mental illness is the basis of a request for medical assistance in dying. The expert panel's report was tabled in Parliament on May 13, 2022.

When it was conducting its parliamentary study, the Special Joint Committee on Medical Assistance in Dying also looked at the provisions of the Criminal Code concerning medical assistance in dying and their application in various contexts, such as that of mental illness. In June 2022, the committee published an interim report containing a summary of the testimony that it had heard or received. Witnesses included psychiatrists and other physicians, as well as people living with a mental illness and representatives of various stakeholder groups. We are looking forward to the special

joint committee's final report which will be presented before February 17, which is this Friday.

[English]

I commend the expert panel and the special joint committee for their hard and important work. MAID is a very personal and challenging subject, and we are better for their careful study and advice.

In addition to the work of the expert group and the special joint committee over the past two years, the provinces, territories and health care community have been working with Health Canada to ensure system readiness. They have developed resources to support MAID assessors and providers, including clinician education and training. They have developed the necessary policies and practice standards. The work is well under way.

Some provinces likely would have been ready to begin offering MAID for mental illness to eligible and properly assessed patients on schedule in March 2023, but we heard from many that they were not quite ready. An extra year will make sure that everyone is ready and well equipped to make MAID for mental illness available in a way that is prudent and safe.

I'm here to talk to you today about the urgent need to extend the exclusion of MAID for mental illness by one year, but I would be remiss if I did not also take this opportunity to address some misinformation about MAID that I've heard over the past few months. I want to reassure all Canadians and all of you around this table that Canada's MAID regime is safe. The system has extensive checks and balances to make sure that only eligible people who clearly and freely choose MAID can access it.

In 2021, in response to the Superior Court decision in Truchon, former Bill C-7 expanded eligibility to receive MAID to people whose natural death was not reasonably foreseeable. To address the additional complexities of these kinds of cases, we created a separate and even more stringent set of procedural safeguards that must be satisfied before MAID can be provided.

Some of these additional safeguards include a minimum 90-day period for assessing eligibility, during which careful consideration is given to the nature of the person suffering and whether there is treatment or alternative means available to relieve that suffering. This safeguard effectively prohibits a practitioner from determining that a person is eligible to receive MAID in fewer than 90 days.

Another additional safeguard is a requirement that one of the practitioners assessing eligibility for MAID has expertise in the underlying condition causing the person's suffering, or that they must consult with a practitioner who does have that requisite expertise. The assessing practitioners must also ensure that the person is informed of the alternative means available to address their suffering, such as counselling services, mental health and disability support services, community services and palliative care. It's not enough to merely discuss treatment alternatives. They must ensure that the person has been offered consultations with relevant professionals who provide those services or care. In addition, both practitioners must agree that the person gave serious consideration to treatment options and alternatives.

MAID for mental illness poses even more complex challenges. That is why we need to take the time necessary to ensure that the health care system is completely ready before we expand eligibility for MAID to those whose sole underlying condition is a mental illness. We recognize that mental illness can cause the same level of suffering that physical illness does.

We are aware that there are people who were waiting to become eligible to receive MAID in March 2023. We recognize that these people are suffering and will be disappointed by an extension of the ineligibility period. We empathize with these individuals.

Nevertheless, I believe this extension is necessary to ensure the safe provision of MAID in all cases where mental illness forms the basis for a request for MAID. We need this extension to ensure that we do not rush the expansion of eligibility and to ensure that we make any changes in a prudent and measured way. Our main priority is to ensure the safe provision of MAID. I'm confident that courts would find this short extension to be constitutional.

● (1840)

[*Translation*]

Canada has implemented legislation on medical assistance in dying that supports autonomy and freedom of choice while offering protection to the most vulnerable. We believe that the timeframe provided for in Bill C-39 will be sufficient so that this continues to be the case.

[*English*]

We need to take the time to get this right. The one-year extension will give more time to ensure that the health care system is ready, and more time to meaningfully consider and act on the special joint committee's recommendations.

Merci. I look forward to your questions.

The Chair: Thank you, Minister Lametti.

Now we'll go to our first round of questions, beginning with Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Chair.

Minister, we're here today because two years ago, you made a mistake that was offside with your caucus. We know that you voted against the first MAID bill because you didn't think it went far enough. That made you an outlier in your caucus. You came to this

committee and said that Bill C-7, an act to amend the Criminal Code for MAID, was constitutional.

The unelected Senate amended it dramatically and created a brand new bill, I would argue, saying that those who are suffering from mental illness would be eligible for MAID. This extension is evidence that you got it wrong two years ago.

I know you're a professor, but you're not the only professor. I have a letter here, signed by 32 law professors, which says:

We disagree as law professors that providing access to MAiD for persons whose sole underlying medical condition is mental illness is constitutionally required, and that *Carter v Canada AG* created or confirmed a constitutional right to suicide, as Minister Lametti has repeatedly stated. Our Supreme Court has never confirmed that there is a broad constitutional right to obtain help with suicide via health-care provider ending-of-life.

Minister, quickly, who is right? Is it you or these 32 law professors?

Hon. David Lametti: I think I'm right, quite frankly.

Hon. Rob Moore: Of course you do.

Hon. David Lametti: I believe that we got it right with our initial bill, Bill C-7, in 2021. What I felt we needed at the time, with respect to mental illness, was more time. At that time, I believe I was right, initially, to say we needed more time.

We accepted the parliamentary process for what it was, and the Senate added the category of mental illness as the sole underlying criteria. We added a time period in order to do the work. We feel that work has, for the most part, been done, but we were slowed by the COVID pandemic, in particular. It prevented all of what we felt was the necessary work from being done. At the federal level, we feel we've done most of it.

I know that Minister Duclos and others feel that a great deal of work has been done. The chair of the expert committee, Dr. Gupta, feels we were ready to go.

● (1845)

Hon. Rob Moore: Thank you, Minister. I have limited time.

Hon. David Lametti: I think we have a sound position now, and I believe there is a very strong section 7 argument to say that we need to provide—

Hon. Rob Moore: Minister, I have only six minutes. I gave you time to answer it.

I wish I could say it surprises me that you think you are right, when these 32 law professors say you're wrong. They say in this letter that you're wrong.

You just indicated, Minister, that there's some kind of constitutional requirement that we do this, but two years ago, you came to this committee with what's called a charter statement. You, as the Minister of Justice and Attorney General, have to certify that all government legislation is charter compliant. Your own charter analysis, speaking about mental illness, says:

...it is based on the inherent risks and complexity that the availability of MAID would present for individuals who suffer solely from mental illness. First, evidence suggests that screening for decision-making capacity is particularly difficult, and subject to a high degree of error, in relation to persons who suffer from a mental illness serious enough to ground a request for MAID. Second, mental illness is generally less predictable than physical illness in terms of the course the illness will take over time. Finally, recent experience in the few countries that permit MAID for people whose sole medical condition is a mental illness (Belgium, Netherlands and Luxembourg) has raised concerns. The concerns relate to both the increasing numbers of these cases and the wide range of mental illnesses in respect of which MAID has been provided.

This isn't the 32 professors talking. This is you. This is your charter statement.

Who are we to believe? Is it the Minister Lametti who sat in that exact chair two years ago with this charter statement or the minister who is here before us today, saying that somehow this is constitutionally required?

Have you updated your charter statement, now that we have an entirely new bill that expands MAID in Canada for those suffering with mental illness?

Hon. David Lametti: I will be depositing a charter statement with respect to this bill.

The short answer is that I was right in 2021 and I'm right now.

A lot of work has been done since 2021. We've had an expert committee that has looked at this. They have evaluated the safeguards, they have evaluated clinical practice and they have produced a set of guidelines. A great deal of work has been done with provinces and territories in this regard. We're not in the same place we were in 2021.

You will recall that when a number of people around this table asked me in 2021, I said we simply needed more time with respect to mental illness. The direction was always going to be that we would get there because, as I've said—and even if it is true that Carter didn't explicitly state this—the direction of the courts is clear that this is a section 7 and section 15 right.

Hon. Rob Moore: Minister, I have only 30 seconds.

What you just said, and what all these law professors said.... I don't want Canadians to be misled. Yesterday, in debate, your own caucus said there's a constitutional requirement, but you told us two years ago there was no constitutional requirement.

You've adopted a radical amendment from an unelected Senate. You made it your own and now you're saying you're going to bring in a charter statement. Isn't the charter statement supposed to precede the bill? We should have that charter statement now.

Your charter statement says that extending MAID for mental illness is wrong. That is the statement that you deposited with this committee, so who is right? Is it you or you?

Hon. David Lametti: That statement was two years ago.

As I said two years ago, we thought that extending MAID for mental illness as a sole criterion was inevitable and the courts would find it to be a constitutional right that Canadians had, but we needed more time.

We've now taken that time. We have done a great deal of work in two years, and we will deposit a charter statement within the usual norms for the tabling of a bill, as we are doing right now.

The Chair: Thank you, Mr. Moore.

Next we will go to Madame Brière for six minutes.

[*Translation*]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

Good evening, everyone.

Minister, thank you for coming this evening.

You mentioned you needed more time. Can you please explain how this extension will give you enough time to reach the objectives of the government which include preparing the healthcare system?

Hon. David Lametti: Thank you for your question, Ms. Brière.

As I have just said, we have accomplished a lot. That includes the work of the Expert Panel on Medical Assistance in Dying and Medical Illness, the Special Joint Committee on Medical Assistance in Dying, the federal government and Health Canada, as well as the provinces and territories, experts, doctors and nurses.

We are nearly there. We just need to make sure that everyone is on the same wavelength. In order to do so, we need another year to take into account the work that has been done so that the assessors and healthcare providers that are working in the field are ready to assess requests for medical assistance in dying in a safe and consistent manner. We are here to take the time that we need to ensure that the guidelines and the framework are understood by everyone.

We are on the right track. As I said, many experts believe that we are already there and that we should go forward right now, but we want to make sure that we are proceeding in a safe and prudent manner. That's the reason we're asking for another year, to make sure that we are all on the same wavelength.

● (1850)

Mrs. Élisabeth Brière: Thank you.

Do you think it was necessary to consult experts and the medical community on this complex issue?

Hon. David Lametti: It is obviously a very complex and personal issue. We have consulted clinicians, who will care for the people that will request MAID in this context, and they are reflecting on the issue. They're the ones who work with their patients and know them the best. They have to work together and with their professional association to ensure that all options have been looked at and tried.

We are nearly there, but we need more time, particularly as we want to be sure that the system will work properly.

Mrs. Élisabeth Brière: On that precise point, it is important that the practitioners who will be able to offer MAID to people suffering from mental illness as the sole underlying medical condition be truly able to differentiate between the cases where people are suffering from suicidal ideation or suicidal tendencies and those where people are eligible for MAID.

What measures can the government take to improve services and support for mental health?

Hon. David Lametti: As a government, we recognize the challenges associated with mental health. A few years ago, in 2016, we started by investing \$5 billion in the healthcare system so that provinces could tackle the issue of mental health and offer better support to people who are suffering. We are continuing to work on this.

The agreement with the provinces, which was discussed this morning, and the bilateral agreements that will follow will allow us to tackle certain issues and challenges, and one of the challenges is precisely mental health.

We hope that by providing the healthcare system with more resources and by working with the provinces and territories, we will be able to set up a quality framework for people suffering from mental disorders in order to improve their health. That is what Canadians are asking us to do, and they are asking us to work together.

This is a priority for our government. We are putting together the measures that were announced.

Mrs. Élisabeth Brière: Non-profit organizations that work with this group of people could be an ally to the healthcare system. What have you heard on the ground about this?

Hon. David Lametti: Actually, we went to visit a group in Sherbrooke that works with people suffering from mental illness. The members of this group were disappointed that this provision of Bill C-39 will be pushed back. They were ready to go forward with it. The people that the group works with are suffering tremendously, and some of them would have wished to have access to MAID, because they had made a well-considered decision of their own volition.

Obviously, members of the group wanted to help so that the system would be ready. They were disappointed. However, I told them that we would give our all so that everyone will be ready. I have a lot of empathy for this organization and its clients.

• (1855)

[English]

The Chair: Thank you, Ms. Brière.

Next, we'll go to Monsieur Thériault for six minutes.

[Translation]

Mr. Luc Thériault: Six minutes is not much time for an issue that is so sensitive.

Minister, you have given me an opportunity and I am taking it. Unlike you, I do not believe that what you have tabled will allow us to do more in the field of mental health; nor do I not believe that this will help us to take care of our fellow citizens over the next 10 years.

We have to take note of the meaning of mental health in this debate. Experts have told us that we should stop talking about mental illness because this is not a clinical term. We should refer to mental disorders. If we are going to agree on this issue, we should adopt the terms used by the experts.

Experts have indicated in their final report that practice standards need to be established in the case of mental disorders.

In a letter sent to committee members, the deputy minister of Health stated that a working group had been created to work on practice standards for medical assistance in dying. This group is made up of people with clinical expertise. Who are they?

Hon. David Lametti: I can provide you with a list of the members of that working group.

I can also send you the letter from Mr. Stephen Lucas, the deputy minister, for the benefit of the other members of the committee who are not sitting on the Special Joint Committee on Medical Assistance in Dying.

Mr. Luc Thériault: Are members of CAMAP, the Canadian Association of MAID Assessors and Providers, part of this working group?

Hon. David Lametti: That would be a question for the representatives from Health Canada.

Ms. Sharon Harper (Director General, Health Care Programs and Policy Directorate, Department of Health): We do not have those names with us today.

Mr. Luc Thériault: No, that is not my question.

I would like to know if members of CAMAP are part of the working group.

Hon. David Lametti: Obviously, that is a question for the representatives for Health Canada.

Mr. Luc Thériault: No, it is not a question for the representatives from Health Canada.

It is a question for the people that are working with the minister, the same minister who is telling us that the process will be pushed back one year so that work can be done on the ground in order to be ready on March 17, 2024. I expect those people to be able to tell us about the working group's progress.

In your statement, you spoke about the work in progress. I am asking you questions on this. CAMAP is a community of practitioners. I want to know if they are involved in the development of practice standards. I know that they were working on the training module, but it would be important to know who is involved in the standards of practice. You will need to have practitioners on board, people who have the necessary knowledge.

Hon. David Lametti: You are right.

Two other ministers have been involved in this bill, the Minister of Health and the Minister of Mental Health and Addictions. That is the reason why public servants from Health Canada are here with me. Your question falls under the remit of the other ministers.

Mr. Thériault, I will provide you with an answer through my colleagues Mr. Duclos and Ms. Bennett.

Mr. Luc Thériault: Alright.

The final report of the Expert Panel on Medical Assistance in Dying and Mental Illness contains two key recommendations, numbers 10 and 16, which deviate from what is currently being practised in terms of MAID.

Recommendation 10 states that in order to proceed with a request for MAID, the assessment must be conducted by two psychiatrists who are not part of the care team. Do you think that is realistic?

From what you have been hearing on the ground, will the deadline allow more people to be trained so that the necessary resources are available to meet this requirement, which is a much stronger safeguard than what is provided for by the usual practice?

• (1900)

Hon. David Lametti: The expert panel made this recommendation while stating that the current act's provisions were sufficient. Provinces can decide to add this measure if they have the resources, that is to say the capacity to obtain an assessment from two psychiatrists in a particular case.

This will give the provinces time to look at the recommendation and to establish a framework based on what is contained in the report. We will be there to support them if need be. We will see what funding will be set aside for mental health in the bilateral agreements.

Mr. Luc Thériault: I also mentioned recommendation 16 which talks about prospective oversight.

Quebec set up its Commission on End-of-Life Care to review what has been done, that is to say cases where MAID has been offered. Here, the expert panel is recommending another measure, i.e., real time monitoring.

In the first instance, experts are telling us that this would not be used to confirm eligibility. However, when we read the report, it says that prospective oversight would have three objectives: improve the quality and security of assessment in real time; support practitioners in the practice of MAID by providing direct and immediate comments on that practice; and reassure practitioners that the work they're doing complies with legal requirements.

Are you intending to implement this recommendation?

Hon. David Lametti: That decision would have to be made with the provinces. Obviously, that falls under provincial jurisdiction.

We are ready to help in each case. The expert panel has recommended that we work together and that we provide leadership.

The experts from Health Canada can perhaps add to my answer.

[*English*]

The Chair: Please be very brief.

Ms. Venetia Lawless (Manager, End-of-Life Care Unit, Department of Health): It's up to the provinces and territories. The regulatory bodies will take that on. It's not up to the federal government to dictate.

However, we have seen some very good response so far from the provinces, territories and regulatory bodies, saying they are looking forward to receiving the final copies and to either adapting or adopting versions of the practice standards.

[*Translation*]

Mr. Luc Thériault: Recommendation 1 says that you should facilitate the work, which brings me to my question.

Will you be facilitating the work? Is that objective one you will strive to meet?

[*English*]

The Chair: I will let them add to that in the second half, when you come back to that.

Thank you, Monsieur Thériault and Mr. MacGregor. Welcome to both of you, by the way. I forgot to welcome Monsieur Thériault.

Mr. MacGregor, you have six minutes. The floor is yours.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you very much, Mr. Chair.

It's good to be back on the justice committee. I don't think I've been since the 42nd Parliament.

Thank you, Minister Lametti, for being here today.

I just want to go back to the Bill C-7 conversation you had with Mr. Moore. I was in the House serving with you at that time. We had the third reading of Bill C-7 on December 10, 2020, so the version we sent to the Senate was in line with your charter statement. Mental disorder still would not have qualified for medical assistance in dying.

The Senate went through the bill fairly quickly. They were able to get to their third reading vote by February 17, 2021, so in a little over two months. They reported it back to us with that amendment.

I just want to narrow it down. You're telling us that in that two-month period, that's when you converted your thoughts on this. I just want to know your thought process. You were fine with the version we sent to the Senate, but then when they sent it back, just in that space of two months, you had a conversion and accepted what they had done to the bill.

I believe they inserted that amendment not at the committee stage but at the report stage of the bill. It was done from the floor of the Senate.

• (1905)

Hon. David Lametti: The only thing that changed was the timing of when. I had always believed—as I have said to my honourable colleagues from the Conservative Party—that we would get to this point and that we were required to get to this point; that people with mental illness and mental disorders were suffering; that people with mental disorders had the capacity to ask for medical assistance in dying, as any other Canadian did; and that the courts would eventually force us there.

The only thing that changed was whether we—in 2021, as originally framed—not put the committee work in the bill and do the expert committee work necessary to get it to a point and then pass a law, or do we accept the Senate's reversal of that, which is to say we're going to put this in with a sunset clause in order to force ourselves to do the committee work within what one would argue is the same time period—

Mr. Alistair MacGregor: If I can just interject—

Hon. David Lametti: —so that the substance doesn't change. The substance didn't change, in my view. I had always thought we weren't ready in 2021. I think we're very close to being ready now, and with another year we will be ready. I'd always envisaged something like this time period in my head.

Mr. Alistair MacGregor: If I can just interject, I think there's been a pattern here, and that's why it's caused so much consternation among different members of Parliament. You introduced Bill C-7 before the statutory requirement of Bill C-14 had been met. There was a requirement in that bill for a statutory review of the legislation, but Bill C-7 came in.

I was a member of our Special Joint Committee on Medical Assistance in Dying in the 43rd Parliament and in this Parliament. It didn't get its work under way. It was interrupted by the election in 2021, so I can tell you, Minister, that in working on that committee we always felt under the gun having that sunset clause hanging over us. It was always hanging over us. That was a real issue.

However, I want to change to the expert panel that was convened by your government. The panel, in its report, said:

the existing MAiD eligibility criteria and safeguards buttressed by existing laws, standards, and practices in related areas of healthcare can provide an adequate structure for MAiD MD-SUMC so long as those are interpreted appropriately to take into consideration the specificity of mental disorders.

I want to know about that, because of course, in our existing Criminal Code, in order to meet all the eligibility requirements in section (c), they have to give “informed consent” and only after they have been informed of the means that are available.

I just want to get your interpretation of that, because being informed of something is one thing, but we know from many people who have testified that in many areas of Canada, some of these services just are not available or not available in a sufficient quantity.

Do you think your government might approach a change in the Criminal Code to change that term “informed”, or are you quite satisfied with what the expert panel has provided you?

Hon. David Lametti: We have been consistent, both in the law and among experts, that being informed is a meaningful process. One has to be meaningfully informed when asked to assess what

one has been told and to have the capacity to do so. All of those represent, we think, a very adequate set of safeguards.

The question of the kinds of social services and social supports in palliative care, mental health supports and other supports, is a different question. It's one that our government is committed to. I think it's one that we probably share in terms of our own values, in terms of getting that better. It's something that provincial governments and the federal government need to do by working together. In most cases it's primarily a provincial responsibility, but we need to work with provinces and territories with respect to leadership and resources in that regard.

I think it's a separate question, it needs to be improved in a variety of different places. As a member of Parliament and as a cabinet minister, I've been committed to that and I remain committed to that, but it is a separate question.

The Chair: Thank you, Mr. MacGregor.

We'll now go to our second round of questions, beginning with Mr. Brock for five minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair.

Welcome, Minister and department officials. Thank you for your attendance.

Minister, I want to go back to my colleague's question regarding the charter statement. I'm just taking a look at the requirements.

On December 13, 2019, amendments to the Department of Justice Act came into force, creating a new duty on [you] to ensure a Charter Statement is tabled in Parliament for every Government bill.

Charter Statements are a transparency measure intended to inform parliamentary and public debate on a bill and help increase awareness and understanding of the Charter.

I listened to your evidence. You said it will be “deposited”—I think that was the word—or tabled.

You also noted, Minister, that yesterday was set aside for all parliamentarians to debate this issue, and largely we heard from Conservative MPs, with not much from the Liberal bench. Between yesterday and tomorrow, approximately 15 hours have been set aside for parliamentary debate, with no charter statement for any parliamentarian to review in advance in order to factor that type of analysis into their speech. You've denied parliamentarians the ability to really reflect on the legality of this bill.

My question to you is very specific. What does “depositing” mean and when can Canadians, but more importantly parliamentarians, expect to receive this and review it fully?

• (1910)

Hon. David Lametti: You'll receive it very soon. It will be tabled in the normal course of business, but you will have it soon.

Mr. Larry Brock: When?

Hon. David Lametti: I can't give you a time.

Mr. Larry Brock: It's under your control. You can provide me with a timeline. Are we talking about next week, next month, next year? When can we receive it?

Hon. David Lametti: You will receive it very soon.

Mr. Larry Brock: What does that mean?

Hon. David Lametti: Very soon is very soon. I think the words are clear.

Mr. Larry Brock: You indicated that provinces need some time and that Canadians are adjusting to this reality. I'd like to get your thoughts, Minister, on the latest Angus Reid poll, indicating that 61% of Canadians polled were supportive of the MAID regime, yet only 31% agreed that a mental health issue as a sole criterion ought to be included.

Three out of 10 Canadians felt that was permissible. Over 70% of Canadians polled disagree.

Are you mindful of that, Minister?

Hon. David Lametti: I'm mindful of the cause of that.

First of all, we are moving ahead because we feel that we will be compelled by the courts to move ahead, so we're going to do this prudently.

I'm also mindful of the misinformation that is out there, which, frankly—I'll be honest—a number of people on your political side are peddling. They're saying that somebody, a young person, will—and I heard this in the House of Commons yesterday—be able to go to their doctor and say, "I'm having suicidal thoughts. I would like MAID." That is clearly not the case.

What we are talking about here, Mr. Brock, is a fraction of a fraction. Already the number of people on track two for MAID, from the numbers we've seen, is 500 out of 10,000—that's half of 1% on track two. This will be a fraction of that.

This is a tiny fraction of people.

Mr. Larry Brock: Minister, I have one minute left. Thank you very much.

Chair, I'm ceding my time to my colleague, Mr. Van Popta.

Thank you.

The Chair: You have one minute.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you.

Mr. Lametti, in November 2020 you appeared before a Senate committee and said, "We want to exclude mental illness as a sole criterion....After conducting consultations across the country...I can tell you there is clearly no consensus."

Today, sir, you're here promoting exactly the opposite, expanding MAID for mental disability. Canadians want to know why the Attorney General changed his mind and whether he's likely to change his mind again in the next 12 months, given enough resistance.

Hon. David Lametti: Thank you, Mr. Van Popta, for the question. I appreciate the sincerity with which you're asking it. I commend you for that.

I want to say to Canadians and say to you that we have now done the work. What I said in 2020 and 2019, I meant: Our consultations had said there wasn't a consensus. I respected the parliamentary process and our dealings with the Senate. Instead of passing a law and then saying we'll move to mental illness as a criterion, we accepted the Senate's reversal of that to say we'll put a time limit on it; otherwise, it will happen inevitably.

It forced us to do the work, and we did the work. I think there is now a very strong consensus—amongst particularly clinicians and people who work with people with mental disorders. These are people who have tried multiple ways to help those suffering from mental disorders and who in a number of cases say there's nothing left that they can do; the person would like to seek MAID.

The timing of this and the work that has to be done have not changed. The order in terms of legislative technique has changed, but the substance of what I had to say hasn't changed. We are in a much better place now, and I think we're ready to move forward.

• (1915)

The Chair: Thank you, Mr. Van Popta and Mr. Lametti.

Now we will go to Ms. Diab for five minutes.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Chair.

Thank you, Minister and officials, for being here.

I want to start off by saying a couple of things. I wasn't here two years ago, nor am I on the committee that was struck. I will say that MAID is a deeply personal and complex choice that really does touch every person and every family. These are usually very difficult, painful situations in a person's life as well as in the lives of their loved ones. I can appreciate that the Government of Canada needs to get this right as best it can. I don't believe there's any such thing as perfect. We all know that laws change. That's why we're here. That's why we have parliamentarians and courts.

Having said all that, I'm wondering if you could clear up a couple of things. I want to give you enough time on the record.

What are the current eligibility criteria for MAID? What happens if we don't pass and give this extension? Can you tell me what the law of the land is and where we are today?

After that, where are the provinces in this?

Hon. David Lametti: Let me start with this: If we don't pass this extension, then next month mental illness as a sole criterion for seeking MAID will be possible. People will have to deal with that. Medical practitioners, many of whom feel they are ready, and many provinces that feel they are ready, will move.

In terms of the current eligibility for MAID generally, one has to be 18 years of age or older. The special committee is looking at the question of mature minors, but for now it is 18 years or older. Secondly, you would have to be eligible for publicly funded health care services. You have to make a voluntary request that's not the result of external pressure from anybody, including family or others. You have to be able to give informed consent to receive MAID after having received all the information to make the decision. You have to have a serious and incurable illness, disease or disability. You have to be in an advanced state of irreversible decline in capability and be enduring intolerable suffering.

If you're on track two, you need to make the request in writing, signed by an independent witness. You need two independent practitioners to provide an assessment. One of those two people has to have an expertise in the area. You need to be told that you can withdraw your request in any case. That assessment period in track two has to be at least 90 days.

Ms. Lena Metlege Diab: As a previous legal practitioner, it sounds to me like obviously there are a number of criteria to go through. It's not something whereby you can say, "I want this", and you're going to get it tomorrow.

Hon. David Lametti: That's, in particular, in track two, when it's not an end-of-life scenario. That's a pretty stringent set of criteria.

Ms. Lena Metlege Diab: Can you comment on the procedural safeguards—I think you did—to protect people who might be more vulnerable than others when requesting MAID?

Hon. David Lametti: It's precisely the track two that did that. We did that after careful consultation with a number of different communities, including representatives of people living with disabilities.

The 90-day assessment period was meant to be a sufficiently long period, so that in the case of a catastrophic accident someone would have time, after that initial period, to reflect on what happened and what might be possible.

As I've mentioned, there is a criterion that the person must be made aware of what the possible supports are, have meaningfully thought about that, and have discussed those thoughts and alternatives for support with a practitioner.

Again, there is the criterion that there must be assessments from two people. One of those people has to have an expertise in the field. On Mr. Thériault's previous question, we kept that flexible. In some places—such as the north—they felt that having two experts in a particular medical field, for example, might be an impediment. We made that flexible. Obviously, it can be up to provinces to make that more stringent if they have the resources to do so.

• (1920)

Ms. Lena Metlege Diab: What are the provinces...?

Do I have any more time?

The Chair: Unfortunately, Ms. Diab, we are out of time. Thank you.

Now, for two and a half minutes in the last round, it's Mr. Thériault.

[*Translation*]

Mr. Luc Thériault: Bill C-14 was a terrible bill, a bad copy of the Quebec bill and because of it, people like Ms. Gladu and Mr. Truchon were forced for a time to plead their case before the courts. These are people who had lived full lives, even if they were in a wheelchair, and who refused to be infantilized and considered as vulnerable people. They had put up with enough discrimination during the lives. They went all the way to the Supreme Court, whereas other people were obliged to stop eating and drinking in order to meet the criteria of a predictable natural death. That is horrible. A state cannot allow that.

That said, Bill C-7 did rectify the problem and in order to get that bill passed, a compromise was made to include mental disorders. Senators said that the bill, which didn't include people suffering from mental disorders, contravened the Canadian Charter of Rights and Freedoms.

The prudent approach consisted of asking people who know what they are talking about, that is to say professionals and experts in the field of mental health and mental illness. Actually, the experts asked us to stop talking about "mental illness" and use the term "mental disorders". Moreover, they presented us with 19 recommendations for providing access. I encourage you to read them.

Two years ago, I was one of those people who were sceptical about the inclusion. I read the report 20 times. I asked questions and I think that indeed, the prudent approach would be to pass Bill C-39. That way, for example, a person who has been suffering from schizophrenia for 30 years and who, at certain times, has become a shell of a human being due to his or her medication, could have access to MAID upon request. However, we're not saying that this would apply to a young person, a minor even, who had tried to commit suicide. The report indicates that it would take decades before such a person would have access to MAID. The person's condition would have to be irreversible and all therapies would have to have been tried.

At some point, we will have to put things into perspective. I will be watching you, Minister, and I will be watching people who are telling us that we are ready. We are not ready right now. You stated that we will be ready to go forward in March. I don't think that will be the case. I don't know who was saying that it will be possible, but it was certainly not the members of the Canadian Association of MAiD, Assessors and Providers, CAMAP, who are putting together seven training modules.

That requires trainers, not assessors. People have to be ready on the ground so as not to make any mistakes. To avoid mistakes, we will have to implement two key recommendations of the report, recommendations 10 and 16. They will become safeguarding measures that go beyond what is being done currently in terms of MAID.

I do not have any more questions, but I am sick of hearing nonsense.

[English]

The Chair: Thank you, Mr. Thériault.

[Translation]

Hon. David Lametti: I totally agree with you, and we will obviously take your opinion on the recommendations into account. I agree that more time was needed, and that's why I'm here.

• (1925)

[English]

The Chair: Thank you.

The last round goes to Mr. MacGregor, for two and a half minutes.

Mr. Alistair MacGregor: Thank you, Mr. Chair.

Minister, when I was on the special joint committee, we heard from a lot of witnesses on far-ranging topics. I remember, when it came to the specific subject matter we're dealing with here, with Bill C-39, that some of our witnesses said that there aren't really any specific criteria for knowing that a mental illness is irremediable, and that there is not a lot of evidence out there that anyone can reliably determine if an individual suffering from a mental illness will not improve. That's how it's different from a physical illness. That's what's given us a lot of pause. We just want to make sure we are, in fact, getting this right. I think that's why you're seeing a lot of this trepidation.

I agree that Bill C-39 needs to be passed. We do need this extension, but, given the testimony that we received in terms of the irremediability of mental disorders and the unknowns that still exist, when we are approaching March 2024, how are you going to ensure that everything is, in fact, in place? Are you going to put in place plans for Parliament to have another say or another review of this before that deadline comes into effect in 2024?

Hon. David Lametti: My understanding, with respect to the question of whether there's irremediability, is that if that criterion can't be met, then a person is not eligible for MAID.

Let me flip that around. It is only in cases where it has been determined—and experts tell us this can be determined—that there is no remedy and that they are certain of it, that a person would be eligible for MAID.

As Mr. Thériault has just said, this is for long-standing mental disorders treated by a psychiatrist where everything has been tried, where the person is an adult capable of making up their own mind and there is no remedy. If that criterion can't be met, then my understanding of the way this works is that the person would not be eligible for MAID.

There will not be many cases, but they will be important to those people who have been long suffering in those cases. Frankly, that's why we're here.

The Chair: Thank you, Mr. MacGregor.

I want thank the honourable Minister Lametti for joining us today. We thank you for that.

We'll just suspend for a minute or so, while he leaves. I think the officials will be staying to answer the rest of your questions.

• (1925)

(Pause)

• (1930)

The Chair: I call the meeting back to order.

There won't be any statements, because the minister has already made it, so we'll go straight to a round of questions.

We'll begin with Mr. Caputo for the first round of six minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you all for being here.

I believe most of my questions will be for you, Mr. Taylor, although Ms. Klineberg and Ms. Wills may jump in.

Mr. Taylor, you're familiar with the charter statement of October 21, 2020. Is that correct?

Mr. Matthew Taylor (General Counsel and Director, Criminal Law Policy Section, Department of Justice): Yes.

• (1935)

Mr. Frank Caputo: You stood by that statement as of the date it was published. Is that correct?

Mr. Matthew Taylor: I don't know what you mean by “stood by”, but certainly that is the charter statement that explains the impacts and the charter considerations relevant to the bill as it was when it was introduced.

Mr. Frank Caputo: When I said “stood by”, I was saying you agree that this is an appropriate statement. Is that correct?

Mr. Matthew Taylor: Yes, that is the statement.

Mr. Frank Caputo: It accurately reflected the law. Is that correct?

Mr. Matthew Taylor: Yes.

Mr. Frank Caputo: Okay.

October 21, 2020 isn't very long ago. You'd agree that the law, as it was reflected and discussed in this charter statement, has changed substantially in a little over two years. Would you agree with that?

Mr. Matthew Taylor: The law has changed since...?

Mr. Frank Caputo: Pardon me. The proposed legislation has changed.

Mr. Matthew Taylor: Certainly, the legislation before you today is different from the legislation that was the basis of the charter statement for Bill C-7. Certainly, the charter statement for Bill C-7 doesn't speak to the mental illness exclusion that was enacted by the Senate.

Mr. Frank Caputo: I'm going to stop you there, sir, because I think it does speak to that. I'm going to quote it to you, in fact.

It states, “Rather, it is based on the inherent risks and complexity that the availability of MAID would present for individuals who suffer solely from mental illness.”

I could go on. It talks about being “subject to a high degree of error”.

That is right in the charter statement. You would agree with that, wouldn't you?

Mr. Matthew Taylor: Yes.

Mr. Frank Caputo: Would you therefore agree that this does discuss the very thing that we're contemplating here—that Senate amendment?

Mr. Matthew Taylor: It discusses what was in the bill as the bill was introduced. It discusses the effects of that legislation vis-à-vis the charter rights of individuals in Canada under section 7 and section 15, I think, specifically. It's speaking to the absence of eligibility for mental illness in that case.

Mr. Frank Caputo: The reality is this: In two short years, we went from a charter statement saying there are inherent risks with MAID for people with mental illness to the minister's sitting here less than two and a half years later saying, no, there are no inherent risks because the government can move forward.

You acknowledge that change. Is that correct?

Mr. Matthew Taylor: I think the minister said that he appreciates that there are risks. I think the charter statement in Bill C-7 reflects that.

I think he also said that a period of time was needed to work through those risks. He spoke to the work that's being done with the provinces and territories to address some of those risks. He spoke to the need to spend more time addressing those risks.

Mr. Frank Caputo: Here is the problem, sir.

When we talk about risks, nobody is saying what “risks” means. This statement here actually outlines the risks. Would you agree with that?

It says that “screening for decision-making capacity is particularly difficult” and there's “a high degree of error”. That is a tangible risk. Would you agree with that?

Mr. Matthew Taylor: Yes.

Mr. Frank Caputo: When we talk about risks, as you've just talked about with what the minister said, we're not talking about something tangible of which we can say, “These are risks.” We're just talking in generalities.

Is that correct?

Mr. Matthew Taylor: I'm not sure I understand your question.

Mr. Frank Caputo: The point is this: This charter statement says there are risks. What I'm hearing from you and the minister is that you're going to deal with those risks.

What are the risks that are going to be dealt with in this legislation in the intervening period? That's my point.

Mr. Matthew Taylor: If enacted, this legislation wouldn't change the current state of the law—if it is enacted prior to March 17. The current state of the law would remain—

Mr. Frank Caputo: In one year, though, we revert back, and people with mental illness will be able to access MAID. Is that correct?

Mr. Matthew Taylor: They will, in the absence of another...something happening.

Mr. Frank Caputo: Right.

Mr. Matthew Taylor: I should just also note that the federal legislation—the federal sphere—speaks to the criminal law framework governing exceptions to criminal liability.

The provinces and territories are still responsible, under their authority for health care, for assessing what criteria, safeguards, policies and measures need to be put in place should medical assistance in dying be offered in their jurisdictions where mental illness is the sole medical condition.

Mr. Frank Caputo: I have only one minute, so I'm going to ask you this.

We have here “screening for decision-making capacity is particularly difficult, and subject to a high degree of error”.

Those risks still exist today and will still exist a year from now, will they not?

Mr. Matthew Taylor: I can't answer that question. I'm not a medical professional. I can't speak to that.

Mr. Frank Caputo: It says it right here in the charter statement.

Mr. Matthew Taylor: Yes, it does.

Mr. Frank Caputo: This is a legal document saying that these risks exist. Can we now say that these risks may not exist, when they're here in the charter statement, the very charter basis on which we are to rely when passing this legislation? Do you see the tension there?

● (1940)

Mr. Matthew Taylor: I get the tension. I understand the seriousness with which you as parliamentarians are considering this issue. I think we're well aware of the concerns that have been expressed by stakeholders—

Mr. Frank Caputo: Here's my last question, sir.

These risks have not yet been addressed. Clearly, that's what I can deduce. You'd agree with that. We have no basis on which to conclude that these risks have been addressed, do we?

Mr. Matthew Taylor: I would say that those risks are being addressed currently and have been over the last two years in terms of the work that the federal government has been doing with the provinces and territories.

Mr. Frank Caputo: It says “a high degree of error” in relation to decision-making. That is an on-the-ground issue. That's saying that people can't do this properly. That's not something that can be ameliorated, sir, with all due respect.

The Chair: Thank you, Mr. Caputo.

We'll now go to Ms. Dhillon for six minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair. Good evening.

Thank you to our witnesses for being here.

Mr. Taylor, would you like to conclude any of your thoughts with regard to the previous question?

Mr. Matthew Taylor: No. The only other thing I would remind the committee of—and I know the committee is seized of this—is that a charter statement will be provided in a very short time—very soon, as the minister has said—and that will provide additional information on the charter considerations around this legislation.

Thank you.

Ms. Anju Dhillon: Thank you for that.

How is the current MAID oversight regime operating?

Mr. Matthew Taylor: I might ask our colleagues at Health Canada to answer that.

Thank you.

Ms. Anju Dhillon: Sure. No problem.

Ms. Sharon Harper: MAID oversight is, in fact, something that.... The federal government does MAID monitoring through collecting data about MAID and providing annual reports. That's how we do the MAID monitoring. The oversight of the implementation of MAID is at the provincial and territorial level, and they do that in a number of different ways. The provinces and territories take different approaches to that.

Some of them, like Ontario and Quebec, review every single provision of MAID that has happened. They review it, and they oversee that. Others take different approaches to doing that. One thing we're doing with them is providing leadership in terms of talking about oversight and encouraging quality assurance and more oversight in terms of how MAID has been provided.

There are also informal methods of oversight that happen as well. There are case conferences among professionals, so they talk about how MAID takes place. There are also discussions with the Canadian Medical Protective Association and CAMAP to make sure the practice is safe and works according to established measures.

Ms. Anju Dhillon: Could you tell us a little or elaborate on how the Government of Canada is engaging with the provinces and territories?

Ms. Sharon Harper: Yes.

We have a very long-standing working group with the provinces and territories. It's been around since 2016, and we've worked very closely with them throughout the years on the interface between the criminal law and the implementation of medical assistance in dy-

ing. We continue to work with them at this point. We plan, in the coming weeks and months, to discuss with them various issues that have come up in the expert panel's report and to understand how they see their systems responding to those recommendations.

Ms. Anju Dhillon: Thank you so much.

Could you talk to us a bit about those with mental illness and their families are made a part of the discussion?

Ms. Sharon Harper: Made a part of the discussion...?

Ms. Anju Dhillon: Yes. How can they be part of these discussions?

If anyone else can answer...

Ms. Sharon Harper: Made part of the discussion.... The federal-provincial-territorial working group is basically a group that works together to consider how MAID can be implemented in the provinces and territories based on the criminal law that exists at the federal level.

I think families and people and individuals can be involved, in a sense, with practitioners. During the assessment period, especially for track two cases, they are encouraged to consider talking...to find out as much information as they can about the individual to understand what is resulting in the request for MAID.

• (1945)

Ms. Anju Dhillon: Can you tell us a bit about why it was also important to consult medical experts and members of the medical community when it came to this issue?

Ms. Sharon Harper: It's definitely very important to understand that, because the medical community has been working on MAID cases since 2016, and also working with complex cases since 2021—cases we call track two cases, where death is not reasonably foreseeable—they understand very well the complexities that are being brought forward by them. We really needed them to weigh in, for example, on the clinical practice standards. They were sent out to a wide range of people to get feedback on those standards, and that feedback is being incorporated now and will be ready by March 2023.

Ms. Anju Dhillon: Thank you.

Am I out of time?

The Chair: You have 30 seconds.

Ms. Anju Dhillon: Would you be able to quickly tell us how the Government of Canada is putting in place ways to improve mental health supports?

Ms. Sharon Harper: Certainly.

There are a number of different approaches that the federal government is taking on mental health supports. One thing that's quite relevant to what we're talking about today is a suicide hotline. That is very relevant to the work we're doing. There is also Wellness Together Canada, which has been put in place to help support Canadians and health care providers in their efforts to improve mental wellness. Those are two very important pieces.

Ms. Anju Dhillon: Thank you very much.

The Chair: Thank you, Ms. Dhillon.

Next we'll go to Mr. Thériault for six minutes.

[*Translation*]

Mr. Luc Thériault: Thank you, Mr. Chair.

People with a chronic mental disorder will have faced stigma and discrimination throughout their lives, so much so that even someone from a comfortable background will live out their years and probably have little when they die. People with a serious chronic mental disorder usually can't find a job because they are victims of discriminatory hiring and so on. The legal experts will argue that they are aware of the situation and that it's unfortunate. However, as a government, we think that the public interest warrants discrimination against those individuals when it comes to their ability to decide when they have reached their breaking point—the point at which they can no longer tolerate their suffering.

Legal experts have told us that, if the government opted to completely exclude people with chronic mental illness for whom treatment is unavailable, it would amount to discrimination and would not pass the test under section 1 of the Canadian Charter of Rights and Freedoms.

What do you think?

I'm not sure what's happening. No one seems to have understood my question.

Will I get more time?

Mr. Matthew Taylor: I think I understand your question.

Mr. Luc Thériault: If you put in your earpiece, you will hear the interpretation.

[*English*]

The Chair: I'll grant the extra time.

Mr. Matthew Taylor: It's not for me to say. There are diverse views on these issues. Minister Lametti has expressed his views on the charter and its relationship to cases where mental illness is the sole medical condition. Some of the committee members have spoken to the letter from the law professors, who have expressed different views. There is a diversity of views on that.

What I would say, and I know it's not a complete answer, is that the charter statement that will be deposited by the department will provide some information on the effects of this legislation on the charter rights of individuals.

● (1950)

[*Translation*]

Mr. Luc Thériault: We are talking about an increased risk. The expert panel didn't rule that out.

The experts made it clear that general rules should not be applied across the board. Cases should be reviewed individually, on a case-by-case basis, as the experts referred to it. The history and progression of the disease need to be considered, as does the number of treatment attempts. The assessor should not be the treating provider or a member of the care team; the assessor should be independent from the treating team. Lastly, the case should also be examined by a psychiatrist, who would also assess the situation. All that to say, the risk is high.

All of those elements are implemented with precautionary principles in mind, as well as measures that require stakeholders to follow a different process.

Medically speaking, Ms. Gladu's condition was easy to assess. No one is saying that a mental disorder is easier to assess. That's why the issue was entrusted to a panel of experts. That's why we created a joint committee, which reviewed the expert panel's report, heard from witnesses and asked questions. There seems to be an appreciation of the increased risk.

What do you think?

Mr. Matthew Taylor: It's a good question.

Ms. Harper will answer your question, Mr. Thériault.

Mr. Luc Thériault: You can take turns answering, if you like. I'm fine with that.

[*English*]

Ms. Sharon Harper: Yes, I think you are very correct in terms of how the risks will be addressed through a case-by-case understanding of the individual, bringing to the situation all the different social determinants of health and all the different things that can be made available to the person to help address the risk, as well as seeking out experts who can bring their expertise to the question.

Does that speak to your question?

[*Translation*]

Mr. Luc Thériault: I'll ask a simpler question.

You are lawyers, as well.

Do you consider it discrimination to exclude someone with a serious chronic mental disorder?

Mr. Matthew Taylor: It's not my place to give my personal opinion.

Sorry.

[*English*]

The Chair: Thank you.

[*Translation*]

Mr. Luc Thériault: That's not why the committee invited you. I think that was a smart decision.

[English]

The Chair: Thank you.

Next is Mr. MacGregor for six minutes.

Mr. Alistair MacGregor: Thank you, Chair.

Mr. Taylor, I'll start with you, if I can.

I asked the minister in the first round about the section where someone has to be informed of the means available to relieve their suffering, including the appropriate counselling services, mental health and disability support services, and community services. This is all under paragraph 241.2(3.1)(g) for track two. I think we can rightly determine that for those who are suffering with a mental disorder and who are going through that profound, internal psychological suffering, their death is not going to be reasonably foreseeable. They have to come under the safeguards specified under track two.

My question to you is this. The Criminal Code uses verbs like “has been informed” and “has been offered”. Is that the limit of what criminal law in Canada can do?

What is the federal government's expectation on the provincial side of things for how their medical systems will step up to ensure...?

I can tell you, from my own personal experience as a member of Parliament, in my community—I represent a riding on Vancouver Island—we have a lot of people who are going through extreme mental health issues. There's a lot of underlying trauma. It is feeding a lot of the opioid crisis.

I understand there are additional safeguards. Someone's not going to be able to walk off the street and access MAID. I understand that very clearly, but I'm trying to figure out where the language of the Criminal Code—the necessity of being informed and offered—meets the provincial side of things.

I'd like it if you could walk us through that.

• (1955)

Mr. Matthew Taylor: I can start on the federal criminal law side, and maybe my colleagues from Health Canada can add in terms of what they might know about how this provision is being operationalized.

I think you know, Mr. MacGregor, that as a general matter, words and statutes are meant to be interpreted in their ordinary meaning. The use of words like “informed” or “offered” are everyday words. There's no technical or legal meaning to those terms: “informed”, “made aware”, “provided the information”, “offered”, “have been given the information about”—

Mr. Alistair MacGregor: When they come under a section labelled “Safeguards”, they take on a little more importance, wouldn't you say?

Mr. Matthew Taylor: Certainly, in terms of the way they operate.... In the statute, they have a specific purpose. You're right; it is related to the safeguards, so these are important.

Maybe I will turn to Ms. Harper and see if she has any information in terms of how it's being implemented.

Ms. Sharon Harper: One of the things we can look at is that PTs are looking at how to set these up so these complex cases can be dealt with appropriately. Some PTs have been exploring the creation of panels or committees to support assessments and case reviews.

Others are planning for teams to assist with undertaking complex assessments, facilitating consults with clinicians who have the necessary expertise, or making referrals to treatments and services.

They're trying to bring together the resources they have to the requirements of the Criminal Code—

Mr. Alistair MacGregor: Thank you. I'm sorry; I just want to make sure I have time for questions.

You mentioned treatments and therapies. I think those were the two terms. I met with some patients today, and we've heard testimony from the special joint committee about alternative therapies, such as guided psilocybin therapy, that are being used. There's some promise. I will acknowledge that with research, there's a lot more that's needed, so that's the caveat I'll put out there.

That being said, though, it has shown some promise in helping people in palliative care relieve the existential dread they feel, knowing their end of life is coming. There's also, perhaps, some promise in maybe effectively treating mental disorders.

I know from conversations with them that either through the section 56 exemption or the special access program, there's still a lot of trouble they have to go through to get approved. What is Health Canada doing with respect to these types of alternative therapies? You must be aware of them. Is there additional funding and research coming our way to fully explore this?

We're dealing with a pretty monumental shift to our Criminal Code here, and we just want to make sure all the alternative therapies, if they show promise, are available and being explored to their full potential.

Ms. Sharon Harper: You are quite right. There are a number of burgeoning therapies out there and people who are saying that this has really helped them in a lot of ways.

Unfortunately, today I do not have the information with me, but we can commit to getting you some information about that.

Mr. Alistair MacGregor: I would appreciate that. Thank you very much.

Chair, I'll leave it at that. Thank you.

The Chair: Thank you, Mr. MacGregor.

We'll next go to our rounds of five minutes, beginning with Mr. Van Popta.

• (2000)

Mr. Tako Van Popta: Thank you, Chair, and thank you, witnesses, for being here.

Mr. Taylor, I'll start with you.

After having heard Mr. Lametti give his earlier testimony, I just want to confirm a few things with you.

First of all, I want to confirm that no Canadian court has ruled that excluding mental disability from MAID is unconstitutional. No court is telling us that we must do it.

Mr. Matthew Taylor: To my knowledge, no court has.

Mr. Tako Van Popta: Thank you.

This is strictly a political initiative started by the Senate and now being promoted by the government. It's not a legal initiative at this point.

Mr. Matthew Taylor: Well, it is a legal initiative insofar as there is a bill before Parliament. Parliament enacted former Bill C-7.

Mr. Tako Van Popta: That's fair enough. Thank you.

I also want to confirm that Bill C-7 was initiated after the Truchon decision, which was a lower court decision, and that the Attorney General decided not to, neglected to or did not appeal to the Court of Appeal of Quebec or, if necessary, to the Supreme Court of Canada.

Mr. Matthew Taylor: That's correct. There was no appeal.

Mr. Tako Van Popta: Okay, thank you.

There's one other thing I want to confirm. My colleague talked about this already. There is no charter assessment being done on the new and expanded Bill C-7.

Mr. Matthew Taylor: There is no charter statement tabled yet in Parliament with respect to Bill C-39.

If your question was whether there was a charter assessment done of Bill C-7 as amended by the Senate, as you likely know, charter statements are not evergreen documents. They're a reflection of the charter considerations of the bill as it is introduced.

Mr. Tako Van Popta: The charter statement was dated October 2020. Bill C-7 came back revised from the Senate and was passed about a year later. There was no intervening charter statement.

Mr. Matthew Taylor: That's correct, because they're not evergreen documents.

Mr. Tako Van Popta: In response to a question from my colleague about when we will see the revised statement, Mr. Lametti said in due course. Due course would have been two years ago.

Mr. Matthew Taylor: Well, a charter statement is required under the Department of Justice Act for any legislation that's introduced in Parliament. As you know, Bill C-39 was recently introduced. A charter statement will be tabled.

Mr. Tako Van Popta: I just wanted to confirm that there is no charter statement in connection with the revised Bill C-7, in the way it came back from the Senate.

Mr. Matthew Taylor: That's correct. As I've said, there's no requirement in the Department of Justice Act to update charter statements to reflect changes passed by Parliament.

Mr. Tako Van Popta: That's even though there was a very substantial change.

Mr. Matthew Taylor: Regardless of the amendments, there's no requirement.

Mr. Tako Van Popta: Thank you for that.

I'm going to turn to the health department officials.

Bill C-7 was passed two years ago. It allows that medical disability will be included for a MAID provision, but there was a two-year suspension. In those two years, we were to come up with safety guidelines and regulations. What is the status of that?

I'm going to just refer quickly to a letter dated October 22—just a few months ago—from the Minister of Health to the special committee. In it he says, “By March 2023, we expect there will be practice standards and training modules in place”. We haven't seen those yet, and now we're facing a year's delay, presumably because those practice standards and training modules are not yet in place. Could you comment on that?

Ms. Sharon Harper: Certainly.

We expect the practice standards to be in place in March 2023. At this point they are incorporating the feedback they got from a number of people and a number of regulatory bodies and clinicians across the country. They're incorporating that feedback. They will be ready by March 2023, at which point there will be a broad dissemination approach for the practice standards.

• (2005)

Mr. Tako Van Popta: That's good. Thank you.

In his statement earlier, the minister said that he is fully confident that in the next 12 months we will be completely ready for medical assistance in dying for people with mental disability.

I wanted to put this question to him, but he's not here. I'm going to put it to you. I don't mean it in any sort of political or partisan way. How will we know that we are, in his words, completely “ready”, when there is so much resistance from the medical profession?

The Chair: I'll give you time for it, but answer very briefly, please.

Ms. Sharon Harper: I'm sorry, but I didn't hear what you said.

The Chair: I was saying, “very briefly”, but it's a very deep question, so I will be liberal with my time.

Ms. Sharon Harper: Thank you.

Mr. Tako Van Popta: How will we know we're completely ready?

Ms. Sharon Harper: I think that is a good question.

I think we will have a very good sense when the clinicians feel that they are well supported, that they have the resources they need to make the assessments, and that they understand what they need to do in order to make the assessments for people with mental illness as a sole underlying condition.

I think that's a really crucial step.

It will take time, because they will need to be able to take up the clinical practice standards. The provinces, territories and regulators will be able to adopt and adapt those, and then the providers will be able to take them on and try them in various situations.

The interesting thing is that because the expert panel said that the cases of mental illness were not, in some ways, that different from other track two cases, they will also be able to bring these clinical practice standards to questions of cases that they're working with right now.

I think it's going to be a really instructive year. They will be able to take those clinical practice standards and understand how to bring them to life.

The Chair: Thank you, Mr. Van Popta.

Next, we'll go Madame Brière for five minutes.

Mrs. Élisabeth Brière: Thank you, Mr. Chair.

I will ask my question in French.

[*Translation*]

Mr. Taylor, is it possible to know whether something is constitutional without a court ruling?

[*English*]

Mr. Matthew Taylor: I think you're right.

At the end of the day, in our system of law, it is the courts that will decide in a constitutional democracy whether something is or is not constitutional.

As we know, there are different perspectives on all areas of law, and there is charter compliance with those areas of law, but ultimately it is the courts that are responsible for making those final determinations.

Mrs. Élisabeth Brière: Thank you.

[*Translation*]

We want to do things right and we also want to protect the most vulnerable groups, while respecting people's autonomy and freedom of choice. Misinformation has been rampant.

What do you say to those who associate suicide with medical assistance in dying?

[*English*]

Ms. Sharon Harper: We agree that there needs to be.... That is a very difficult question.

We recognize that suicidality is a concern, and we agree that it's important to distinguish between suicidal intent and a rational, well-considered request for MAID from someone with a long-standing mental disorder.

We've heard from practitioners that psychiatrists are well trained to do this. They have indicated that suicide assessments are already part of the current MAID assessment practices, as are suicide prevention efforts when these are warranted.

The expert panel has made recommendations to assist practitioners in discerning a rational request for MAID, including doing many assessments over a period of time, "including when possible, during periods of remission or reduced symptoms, and not during periods of acute emotional distress or crisis." The panel advises that "suicidal ideation must be considered and evaluated to best determine whether the requester's wish to end their life by MAiD represents a capable appraisal of their situation rather than a potentially treatable symptom of their mental disorder."

The MAID practice standards, which will be available in March 2023, will assist in this regard.

● (2010)

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

A psychiatrist from Ontario, I believe, told the Special Joint Committee on Medical Assistance in Dying that, over her roughly 30-year career, she had granted MAID access to two people whose sole underlying medical condition was a mental disorder.

Do you have a sense of what the demand will be once the option is available?

Ms. Sharon Harper: I'm going to answer in English, if you don't mind.

[*English*]

We actually expect the demand to be quite low, based on international comparisons. For 2021 and 2022, we've been able to determine that of all of what we call track 2 MAID cases, only 2.2% involved death that was not reasonably foreseeable. Now, we expect that, based on the cases in the Netherlands, where the number was 1.5% of the assisted-dying cases, those actually involved psychiatric conditions.

We expect something similar with respect to our MAID law in terms of track 2 cases.

[*Translation*]

Mrs. Élisabeth Brière: Did you take into account what happened in Quebec, where the demand for MAID was higher than expected?

Do you take those specific or provincial considerations into account?

[English]

Ms. Sharon Harper: Yes. In our monitoring reports we break down all the information by province and territory. In fact it's quite an extensive report. Right now we would not look at MAID in cases of mental illness, because of course that's not yet legal, but of course this year it will look at all the track 2 cases over a full year. I think there will be quite a bit of information in that report that will be very useful.

The Chair: Thank you.

Thank you, Ms. Brière.

Last we'll go to two three-minute rounds.

Mr. Thériault, go ahead for three minutes.

[Translation]

Mr. Luc Thériault: Thank you.

We talked about vulnerability. Is there anyone more vulnerable than someone who has an incurable illness causing them so much suffering that they have reached their breaking point? That is why I think the government wisely decided not to take the issue to the Supreme Court. People were going on hunger strikes in an attempt to satisfy the reasonably foreseeable natural death criterion because they could no longer take their suffering and desperately wanted access to MAID. That's horrendous.

My fellow members over here are critical of the judge's decision, but it established that the government's position infringed on the individual's right to life because, instead of providing assistance when the person could no longer tolerate their suffering, the system waited for them to commit suicide. The message that sends people is that suicide is their only option. It amounts to telling them to commit suicide because it's not our problem. On top of it all, those individuals had to take their fight all the way to the Supreme Court despite the intolerable suffering they were experiencing because of their illness. I don't think that is a government's role. A government's role is to make sure the conditions are in place so that people can exercise their freedom of choice.

That said, how many MAID bills, other than Bill C-39, were private members' bills? None. Bills C-14 and C-7 came about in response to court decisions, because citizens were forced to defend their rights in court.

My Conservative colleagues say that, had they been in power, Ms. Gladu and Mr. Truchon would have never had access to MAID, nor would all the others who suffered and were granted access to MAID precisely thanks to Bill C-7. It's probably worth asking who the most vulnerable members of society are. In my view, the vulnerable ones are those suffering from incurable illnesses who are denied MAID because the right-thinking government knows better than they do what's good for them. For what reason should they be denied that?

Throughout their lives, their right to self-determination is recognized. In biomedical contexts, they are told that no intervention can be provided without their free and informed consent. Then, at the most intimate moment of their lives, meaning death, the Conservatives would have the government make the decision for them be-

cause it knows best. It is not the government or their neighbour dying, it is the person themselves. I'm sorry, but I do not agree. I think the passage of Bill C-7 was a good thing.

However, we need to make sure we are truly ready, because people have mental disorders and are suffering. Implementing this across the country isn't easy. There will be pushback, as there has been in Quebec. Some institutions don't want to provide MAID to people who are terminally ill, even though that criterion is the subject of a countrywide consensus. Patients are prevented from accessing MAID by those institutions. It's scandalous. It's shameful. We have to avoid that.

• (2015)

[English]

The Chair: Very conservatively, very briefly, please.

A voice: I don't think it was a question.

The Chair: It's more of a statement.

[Translation]

Mr. Luc Thériault: Someone may have a comment, but I wasn't expecting one.

Mr. Matthew Taylor: I think that, if he were here, the minister would agree with you, Mr. Thériault.

[English]

The Chair: Thank you.

Mr. MacGregor for three minutes.

Mr. Alistair MacGregor: Thank you, Mr. Chair.

Our special joint committee did release an interim report specifically on this subject. It was tabled last year. I'll just quote from our conclusions:

We must have standards of practice, clear guidelines, adequate training for practitioners, comprehensive patient assessments and meaningful oversight in place for the case of [medical assistance in dying where a mental disorder is the sole underlying medical condition]. This task will require the efforts and collaboration of regulators, professional associations, institutional committees and all levels of government and these actors need to be engaged and supported in this important work.

Although some work is already underway to implement the recommendations of the Expert panel, there is concern that more remains to be done to ensure that all necessary steps have been taken to be ready by the March 2023 deadline....

Now, you've expressed confidence—I was writing notes—that by next March the standards will be in place. I know that provincial governments and the regulatory bodies are already talking about this. I guess one question I have is this: In Health Canada's conversations with your provincial counterparts, do you expect that the provincial governments and the regulatory bodies, the professional associations, will 100% accept these, or do you expect that in some provinces there might be some variances here and there?

That's what I'm curious about. I mean, I expect that they all have very much a vested interest in the work that's been done so far. I know that a lot of very committed people are working on this. Do you get a sense that there might be the odd bit of variance, depending upon what province you're in?

And now they have an extra year to think about it.

Voices: Oh, oh!

• (2020)

Ms. Sharon Harper: That's a good point.

In a country with 13 different provinces and territories, I expect that there will be some variation, because they're very interested in the practice standards. We had an excellent response when they were sent out for consultation and feedback. Some of them have committed to adopting them wholesale, just taking them on.

I think others.... The expression we like to use is "adopt or adapt". They will look at them, certainly. I think they will all look at them very carefully, see how they fit in with the processes they currently have and then adopt those that they feel will strengthen their current systems.

I think that's how the provinces and territories will probably look at them, but they are quite enthusiastic to see these and to be able to use them and bring them into their own systems.

Mr. Alistair MacGregor: To be clear, in the Criminal Code the safeguards apply nationwide, of course, but we're talking more

about the specific provincial jurisdiction they have in their regulatory bodies. Is that right?

Ms. Sharon Harper: Exactly. This is how they build their system in relation to the Criminal Code. The Criminal Code stays the same. They take medical practice and work with that and their jurisdictions around medical practice to make the system.... It's the implementation of it, if you will.

The Chair: Thank you, Mr. MacGregor.

I want to thank Ms. Harper, Ms. Lawless, Mr. Taylor and Ms. Wills for attending this special meeting. I hope you all have a great evening.

Mr. Tako Van Popta: Don't forget to thank the people on the screen.

The Chair: Oh, yes.

Thank you, Ms. Klineberg and Ms. Lemaire. I'm sorry. I should have looked right in front of me.

Take care. The meeting is now adjourned.

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